

JUDGE SCULLIN

Magistrate Judge Lowe

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

MAY 21 2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AT _____ O'CLOCK _____ M
LAWRENCE K. BAERMAN, Clerk
UTICA

RICHIE THOMAS,
Plaintiff

v.

42 USC §1983

9:04 -CV-0579

KEVIN O'GRADY, STEPHEN URAM, MICHAEL DANN, WILLIAM CHILSON, OFFICER
LUPO AND TROY MITCHELL
INDIVIDUALLY AND IN THEIR
OFFICIAL CAPACITIES.
Defendants

COMPLAINT

DEMAND FOR A JURY TRIAL

I. JURISDICTION AND PARTIES

1. This action is brought pursuant to 42 USC §1983.
2. This is an action of law to address the deprivation under color, statute, custom or usage of rights, privileges and immunities secured to the plaintiff, Richie Thomas, by the Eighth Amendment to the Constitution of the United States and 42 USC §1983 and arising under the laws and statutes of the State of New York.
3. The jurisdiction of this Court is invoked under 28 USC §1331 and §1343(a)(3). This being an action authorized by law to address the deprivation under color of state law, custom or usage of a right, privilege and immunity secured to the Plaintiff by the Eighth Amendment to the United States Constitution. Jurisdiction is also invoked under 42 USC §1983.

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4. All conditions precedent to jurisdiction under 42 USC §1983 have occurred or have been complied with as the plaintiff properly exhausted administrative grievance procedures.
5. There is a prisoner grievance procedure at Auburn Correctional Facility. The plaintiff filed a grievance and appealed all the way to the CORC. There were no findings of any wrongdoings by the defendants.
6. The amount in controversy exceeds Fifty Thousand Dollars (\$50,000.00) excluding interest and costs and/or otherwise is within the jurisdiction of this Court.
7. The plaintiff is a citizen of the United States and the state of New York who now resides in Attica Correctional Facility, Attica, New York 14011.
8. Upon information and belief each of the above named defendants is employed at Auburn Correctional Facility.
9. Each of the above named defendants are "persons" within the meaning of 42 USC §1983.

II. STATEMENT OF THE FACTS

AND AS FOR A FIRST CAUSE OF ACTION

10. Plaintiff repeats, reiterates and realleges each and every allegation heretofore set forth in paragraphs number 1-9 with the same force and effect as if the same were fully set forth hereinafter.
11. Upon information and belief, on December 21, 2002 at approximately 11:00 am during a lockdown at Auburn Correctional Facility, the plaintiff while being handcuffed was taken to a utility room where he was assaulted by the above named defendants.

12. Upon information and belief, the plaintiff suffered personal injury, mental distress, SHU confinement, physical suffering, verbal abuse and fear for life.

13. Upon information and belief, the plaintiff suffered a cut requiring seven stitches, a broken elbow and emotional distress.

WHEREFORE, Plaintiff seeks:


a) Compensatory damages in the amount of two hundred and fifty thousand dollars (\$250,000.00);

b) Punitive damage in the amount of two hundred and fifty thousand dollars (\$250,000.00);

c) Attorney Fees plus costs of the action; and

d) and such other relief as to the Court seems just and proper.

DATED: May 19, 2004


David Giglio
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